Appl. No.: 09/482,178
Amdt. Dated: October 29, 2003
Reply to Office Action of July 31, 2003
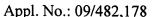
Docket No.: EMPIR-012AUS

REMARKS/ARGUMENTS:

The above-identified patent application has been amended and Applicants respectfully request the Examiner to reconsider and again examine the claims as amended.

Claims 1-18 and 20-22 are pending in the present application. Claims 1-18 and 20-22 stand rejected. Claims 1, 10, 18 and 22 are amended herein.

The Examiner issued a Final Rejection on July 21, 2003, which Applicants respectfully suggest is inappropriate at this time. MPEP §706.07(a) states " .. second or any subsequent actions on the merits shall be final, except where the Examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement ...". Applicants respectfully submit that, with respect to the pending claims at the time, the amendment submitted on July 2, 2003 cancelled claim 19. Accordingly, the Examiner's grounds of rejection submitted in the rejection of July 21, 2003 was not necessitated by Applicants cancellation of claim 19, nor by the submittal of an IDS, and therefore the rejection of July 21, 2003 should not have been a final rejection. Applicants request that the finality of the rejection of July 31, 2003 be withdrawn.

The Examiner rejected claims 1-18 and 20-22 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,974,572 to Weinberg et al.(hereinafter Weinberg), in view of U.S. Patent No. 6,574,578 to Logan (hereinafter Logan).

The Examiner stated that Weinberg discloses a web site analysis program implemented as a collection of software components. Weinberg also specifies that the content tested is objects (components) and that a user can retrieve a URL of the component from the server. Weinberg discloses at column 6, lines 8-15, that the content objects include HTML documents, GIF files, sound files, video files, Java applets and aglets, and downloadable applications.

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In contrast to the "content objects" of Weinberg (which the Examiner identifies as software components), claims 1, 10 , 18 and 22 have been amended to include the term "technology based software components". Examples of technology based software components are Enterprise Java Bean software components (EJBs) from Sun Microsystems; COM, DCOM and COM+ software components from Microsoft Corporation, and CORBA software components from International Business Machines (IBM). Accordingly, technology based software components are distinct from the "content objects" of Weinberg.

The Examiner stated that Logan discloses details regarding application components. Logan downloads the component to a partition build machine and builds a partition for the component. Logan then stores the partition in a partition server. Logan then downloads the partition to a client where the testing is performed locally, that is the testing is NOT performed over a network.. As recited in column 6, lines 63-67, " [T]he test suites are run locally on the ITE client machines 206, ... so that latency in transacting with the ITE server 202 does not impact the test results."

In contrast to Logan, the present invention runs the test code across a network to the technology based software component, therefore network latency is included as part of the test measurements. This is done to provide a more accurate representation of the performance of the technology based software component, since in real-time usage, network latency will play a part in the performance of the technology based software component.

Therefore, since Weinberg fails to disclose or suggest the testing of technology based software components over a network, and since Logan fails to disclose or suggest the testing of a technology based software component over a network, and in fact Logan teaches away from testing a technology based software component over a network, a theoretical combination of Weinberg and Logan also fails to disclose or suggest the testing of a technology based software component over a network, and claims 1, 10 , 18 and 22 are believed allowable over Weinberg and Logan, taken alone or in combination. Claims 2-9, 11-17, and 20-21 depend from claims 1,

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10 or 18 and are believed allowable as they depend from a base claim which is believed allowable. Accordingly, the rejection of claims 1-18 and 20-22 under §103(a) over Weinberg in view of Logan is believed to have been overcome.

In view of the above, claims 1-18 and 20-22 are believed to be in condition for allowance, and reconsideration and allowance thereof is respectfully requested.

The Examiner is invited to telephone the undersigning attorney if there are any questions regarding this Amendment or this application.

The Assistant Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 500845.

Respectfully submitted,

Dated: _29-oct-03_

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